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6 ANDRE SMITH, T16447,
7 Petitioner,
8 v.
9 RICK HILL, Warden,
10 Respondent.

Case No. [20-cv-03235-CRB](#) (PR)

**ORDER DISMISSING PETITION FOR
A WRIT OF HABEAS CORPUS AS
SECOND OR SUCCESSIVE**

(ECF Nos. 2 & 3)

11 Petitioner, a state prisoner currently incarcerated at Folsom State Prison, has filed a second
12 or successive petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a judgment
13 of conviction and sentence from Alameda County Superior Court. His first petition was denied as
14 untimely under 28 U.S.C. § 2244(d) on July 30, 2013. See Smith v. Lewis, No. 12-cv-04011-CRB
15 (PR) (N.D. Cal. July 30, 2013) (order granting motion to dismiss).

16 A second or successive petition may not be filed in this court unless petitioner first obtains
17 from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to
18 consider the petition. See 28 U.S.C. § 2244(b)(3)(A); see also McNabb v. Yates, 576 F.3d 1028,
19 1029 (9th Cir. 2009) (§ 2244(b) applies when prior petition was dismissed as untimely). Petitioner
20 has not obtained such an order from the Ninth Circuit. The instant petition accordingly is
21 DISMISSED without prejudice to refiling if petitioner obtains the necessary order.

22 But based solely on petitioner's affidavit of poverty, his application to proceed in forma
23 pauperis (ECF No. 2) under 28 U.S.C. § 1915 is GRANTED.

24 The clerk shall close the file and terminate all pending motions (see ECF No. 3) as moot.

25 **IT IS SO ORDERED.**

26 Dated: May 14, 2020

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CHARLES R. BREYER
United States District Judge